



# NEWS RELEASE

CALIFORNIA SECRETARY OF STATE **KEVIN SHELLEY**

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FOR IMMEDIATE RELEASE  
Friday, September 12, 2003

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## **Secretary of State Kevin Shelley to Allow Overseas Military Personnel to Return Absentee Ballots by Fax**

*Cites Extraordinary Time Constraints of the October 7<sup>th</sup> Statewide Special Election;  
Need to Ensure Overseas Voters Can Vote and Have Their Vote Count*

SACRAMENTO – Citing the short time frame for the October 7<sup>th</sup> Statewide Special Election, Secretary of State Kevin Shelley today directed county officials to accept faxed ballots from overseas military personnel, their dependents, and other registered voters temporarily residing abroad.

“I am taking this extraordinary step because of the abbreviated time frame for the October 7<sup>th</sup> Statewide Special Election,” Secretary of State Kevin Shelley said. “Voting is a fundamental right. There may not be time for our men and women serving overseas to return their ballots by regular mail.”

“I took a thoughtful and deliberate look at this issue,” Shelley said. “My decision reflects a thorough legal review. I think everyone will agree that guaranteeing the voting rights of Americans who are serving our country and working overseas is the right thing to do.”

Shelley’s order is effective for the October 7<sup>th</sup> Statewide Special Election only. It requires that the voter be informed of and agree to waive his or her right to a secret ballot.

All faxed ballots must be received by county elections officials by the close of the polls (8:00 p.m.) on Election Day.

Shelley said he plans a thorough review of the special circumstances affecting overseas voters, and will recommend legislation and establish standard administrative practices for future elections.

Secretary Shelley’s order accompanies this release.

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**September 12, 2003**

**TO:** All County Clerks/Registrars of Voters (03249)

**FROM:** 

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KEVIN SHELLEY  
Secretary of State

**SUBJECT:** OVERSEAS MILITARY VOTERS

One consequence of the compressed schedule for preparing for the upcoming October 7<sup>th</sup> Statewide Special Election is the possible disenfranchisement of overseas military voters, their overseas spouses and dependents, and other registered voters temporarily residing abroad. Under normal circumstances, many of these voters have a difficult time obtaining, voting, and returning their ballots in time to be counted. For this election, the increased number of men and women serving in Iraq, Afghanistan, and elsewhere compounds this difficulty.

As recognized by the California Supreme Court in *Burton v. Shelley* (S117834), the recall election scheduled for October 7, 2003, is unlike any other election in terms of the periods of time available for performing various functions by elections officials, candidates and voters and that the Secretary of State, as the officer charged with administering the election laws, must exercise his discretion with respect to ensuring that the recall election proceeds in an expedited fashion.

Therefore, in order to ensure that the recall election is conducted as required by the California Constitution and that the absentee ballot provisions are “liberally construed” in favor of the absent voter as required by Elections Code section 3000, I hereby direct that voted absentee ballots may be returned by FAX for the October 7, 2003, statewide special election, subject to the following procedures:

- A. The voter must be a “special absentee voter” as defined in Elections Code sections 300 (b), who is overseas.
- B. The voter is informed of and agrees to waive his or her right to a secret ballot.
- C. The ballot is received by the elections official not later than the close of the polls on Election Day.
- D. The elections official shall adopt appropriate procedures to protect the secrecy of the voted absentee ballots returned by FAX.
- E. The information received from the voter includes that which is required by Elections Code section 3011, including a declaration, signed by the voter under penalty of perjury, the signature of the voter, the date of signing, and the other required warnings and statements.

- F. The voter's eligibility to vote can be determined through comparison of the signature on the return information file with the signature on his or her affidavit of registration.
- G. The ballot is duplicated and all materials are preserved according to procedures set forth in the Elections Code.

It must be our goal to do everything possible to assist the men and women in serving our military overseas – and their spouses and dependents -- to exercise their franchise. In addition to the above, this includes accepting applications for absentee ballots via email and/or FAX, sending absentee ballots to voters via email and/or FAX, and otherwise expediting mailing and delivery of voting information and materials.

If you have any questions or need further information on this issue, please contact John Mott-Smith at 916/653-3228.

Vote/faxballots3-093